

**ORIGINAL**

No. 97-6146

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**MOTION FILED** IN THE SUPREME COURT OF THE

**OCT 22 1997**

UNITED STATES

October Term, 1996

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ANGEL J. MONGE,

Petitioner,

vs.

PEOPLE OF THE STATE OF CALIFORNIA,

Respondent.

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MOTION FOR LEAVE TO FILE AMICUS BRIEF  
IN SUPPORT OF PETITION FOR WRIT  
OF CERTIORARI TO THE SUPREME  
COURT OF THE STATE OF CALIFORNIA

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JEFFREY E. THOMA

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Member, California Public Defenders Association

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Angel J. Monge

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The California Public Defenders Association respectfully moves for leave to file this amicus curiae brief in support of petitioner's prayer that a Writ of Certiorari issue to review the judgement and decision of the Supreme Court of the State of California entered on August 26, 1997.

Pursuant to Rule 37, the California Public Defenders Association respectfully moves for leave to file, and if allowed, hereby respectfully submits, this amicus curiae brief, in support of petitioner's prayer that a Writ of Certiorari issue to review the judgement and decision of the Supreme Court of the State of California entered on August 26, 1997, and in favor of this Honorable Court reversing that decision. Petitioner consents to the filing of this amicus curiae brief, and respondent has refused their consent.

The California Public Defenders Association (hereafter CPDA) is the statewide association of public defenders. As such, members of this association are primary trial counsel in the State of California for criminal defendants who are unable to afford counsel. The Association is concerned with issues affecting criminal defendants and the administration of justice throughout California.

— The instant case raises a crucial question regarding whether the Double Jeopardy Clause applies to successive non-capital sentence enhancement trials that contain all the hallmarks of a trial on guilt or innocence. The members of CPDA represent the overwhelming majority of defendants accused of crimes in this state, as well as the majority of individuals in California situated similarly to petitioner herein. Thus, this organization has a vital and continuing interest in this issue being resolved, above and beyond the singular interest of petitioner herein. Because so many clients of this organization's members are affected by any decision on this issue, CPDA believes it has a sufficient interest and good reason to present this amicus brief.

Pursuant to Rule 37.6 of the rules of this Court, amici state that no counsel for a party authored this brief in whole or in part, and that no person, other than amici and their members, made a monetary contribution to the preparation or submission of this brief.

**THERE SHOULD BE A UNIFORM RULE THROUGHOUT THE COUNTRY AS TO WHETHER THE FEDERAL DOUBLE JEOPARDY CLAUSE APPLIES TO SUCCESSIVE NON-CAPITAL SENTENCE ENHANCEMENT TRIALS THAT CONTAIN ALL THE HALLMARKS OF A TRIAL ON GUILT OR INNOCENCE**

The highest courts of Colorado, Texas, and Washington have all determined that Double Jeopardy applies to habitual offender schemes, so long as they have all the characteristics of a trial on the question of guilt or innocence. See *People v. Quintana*, 634 P.2d 413, 417-418 Colo. 1981); *Cooper v. State*, 631 S.W. 508, 514 (Tex. 1982); *State v. Hennings*, 670 P.2d 256, 257-262 (Wash. 1983). Prior to the new rule doctrine of *Teague-v. Lane*, 489 U.S. 288 (1989), as applied in *Caspari v. Bohlen*, 510 U.S. 383 (1994); which now precludes federal courts from addressing this issue, several circuit courts had reached this same result. See, e.g., *Durosko v. Lewis*, 882 F.2d 357, 359 (9th Cir. 1989), *cert. denied*, 110 S.Ct. 1930; *Nelson v. Lockhart*, 828 F.2d 446, 449-451 and n.7 (8th Cir. 1987), *overruled on other grounds*, *Lockhart v. Nelson* 488 U.S. 33; *Briggs v. Procunier*, 764 F.2d 368, 372-373 (5th Cir. 1982); *French v. Estelle*, 692 F.2d 1021, 1023 (5th Cir. 1982), *cert. denied*, 461 U.S. 937.

Now the California Supreme Court in the instant case has reached the opposite result, denying the benefit of the Double Jeopardy Clause to defendants in these circumstances. There are a vast number of defendants situated in the

same circumstances as petitioner herein, who will also be affected by the ultimate decision of the courts on this issue. This Honorable Court has never decided this issue. See, e.g., *Lockhart v. Nelson*, 488 U.S. 33 (1988); *Caspari v. Bolden*, *supra*.

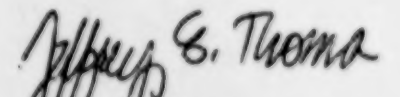
On behalf of the members of CPDA, and all of their clients who are similarly situated, we ask this Honorable Court to grant certiorari to resolve the split of authority, putting this divisive issue to rest for all this nation's citizens. The question of whether the federal Double Jeopardy Clause applies to successive non-capital enhancements which have all the hallmarks of a trial should depend upon what the law is, not upon where the case happens to be tried.

**CONCLUSION**

For all the foregoing reasons, the California Public Defenders Association believes this Petition for Writ of Certiorari should be granted.

DATED: October 22, 1997

Respectfully submitted,



Jeffrey E. Thoma  
Member, CPDA Board of Directors  
Member, CPDA Amicus Committee



CLIFFORD GARDNER  
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October 21, 1997

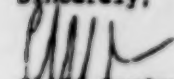
Jeff Thoma, Esq.  
Hendecine County Public Defender  
199 South School Street  
Ukiah, CA 95482

Re: Monga v. California, Case No. 97-6146

Dear Mr. Thoma:

This letter will confirm our recent conversation. On behalf of petitioner I hereby consent to your filing of an amicus brief in support of petitioner's Petition for Writ of Certiorari in the above case on behalf of the California Public Defender's Association.

Sincerely,



Cliff Gardner  
for GARDNER & DERHAM

cc: Office of the Attorney General

same circumstances as petitioner herein, who will also be affected by the ultimate decision of the courts on this issue. This Honorable Court has never decided this issue. See, e.g., *Lockhart v. Nelson*, 488 U.S. 33 (1988); *Caspari v. Bolden*, *supra*.

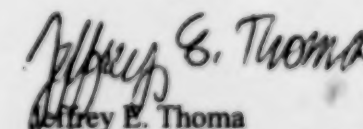
On behalf of the members of CPDA, and all of their clients who are similarly situated, we ask this Honorable Court to grant certiorari to resolve the split of authority, putting this divisive issue to rest for all this nation's citizens. The question of whether the federal Double Jeopardy Clause applies to successive non-capital enhancements which have all the hallmarks of a trial should depend upon what the law is, not upon where the case happens to be tried.

#### CONCLUSION

For all the foregoing reasons, the California Public Defenders Association believes this Petition for Writ of Certiorari should be granted.

DATED: October 22, 1997

Respectfully submitted,



Jeffrey E. Thoma  
Member, CPDA Board of Directors  
Member, CPDA Amicus Committee

**CERTIFICATE OF SERVICE**

I, Mariea Kubanis, am over 18 years of age. My business address is 199 So. School Street, Ukiah, California 95482. I am not a party to this action.

**AMICUS FOR WRIT OF CERTIORARI**

upon the parties named below by depositing a true copy in a United States mailbox in Ukiah, California, in a sealed envelope, postage prepaid, and addressed as follows:

Office of the Attorney General  
300 S. Spring Street  
Los Angeles, CA 90013

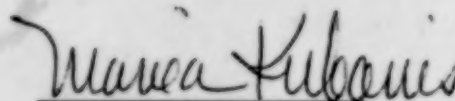
California Appellate Project  
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Angel Jaime Monge  
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Cliff Gardner  
Attorney at Law  
Ghirardelli Square  
800 North Point  
San Francisco, CA 94109

I declare under penalty of perjury that the foregoing is true.

Executed on October 22, 1997, in Ukiah, California.

  
\_\_\_\_\_  
Mariea Kubanis

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